Address of Rear Admiral Charles H. Stockton, President of George Washington University,

on

The Codification of the Laws of Naval Warfare.

With the proposition for the establishment of an international prize court, the convention concerning which having been duly accepted and ratified by the United States, it becomes more and more evident that the laws, codes and customs concerning sea warfare should be collected, codified and stamped with international authority, so as to be in readiness for use by the proposed established international prize court at its first assemblage. So evident has this become that Great Britain before ratifying the convention of the Second Hague Conference establishing such a court, deemed it essential that a code should be created preliminary to the ratification of the convention and hence called in 1908, an international naval conference, consisting of the principal sea Powers, to meet at London, from which conference has proceeded the now well-known "Declaration of London." Great Britain at present holds this Prize Court Convention in abeyance until the Declaration of London governing the procedure, and announcing the international maritime law that is applicable, could be accepted as the governing law. On the other hand the United States, while a signatory Power to the Declaration of London, held the code in abeyance in order to first ratify, as she has done, the convention establishing the International Prize Court with its modifying protocol. Both the code and the prize court have now been ratified.

The codification of sea laws, sea customs and sea warfare is however no new thing. Maritime life has been a matter apart from ordinary life from time immemorial and its customs and laws have been peculiarly laws of their own kind. Even to this day those who follow the sea enter into a life which is almost international in its sphere and the "saving grace of salt water" is found through a great portion of the charted and uncharted international law of the day. Nothing can be more common and more international than the sea itself, and it is not to be wondered that the free masonry existing among those who follow the sea in all its vicissitudes dwarfs national lines and renders those who live only within the rigid boundaries of a separate state almost provincial by comparison.

The conditions of sea life and sea trade in the earliest days formed

three great maritime codes, the sea laws of Oléron, embodying the usages of the seamen of the Atlantic; the sea laws of Wisby, embodying the customs of the North Sea and the Baltic, and finally the Consulate of the Sea, the collection of the customs and judgments of those who followed the sea in the Mediterranean. These codes date back to the 14th and 15th centuries and were the result of either judgments of courts or agreements of bodies of merchants and ship owners or both.

The edition of 1494 of the Book of the Consulate of the Sea, the best published one existing, contains first a code of procedure issued by the Kings of Arragon for the guidance of the courts of the Consuls of the Sea, secondly a collection of ancient customs of the sea, and thirdly a body of ordinances for the government of vessels.

From the time of these early codifications until very recent times no codifications of sea customs or warfare has been again attempted. Other codifications of international law however have been made, in most cases by private persons or associations. These have been codes embracing the whole subject of international law or codes of land warfare alone or, under the Geneva conferences, codes referring to the care of the sick and wounded and as to the status of those who are charged with their care.

With some personal experience as to private and international codification, I can say that there is much to be said in the way of commendation for both attempts. Such rules are, to say the very least, in private attempts, elements to be considered in the final make-up, if there should be such a thing as final words in these matters. But all private attempts and codes issuing from one nation or person are unilateral in force or opinion and in so far, restricted in scope and authority. The formation of a code of naval warfare especially should be under international auspices, as the subjects contained therein are international and there should be no limitation as to language, or to application. It should not be pan-American any more than it should be pan-African, or pan-European or pan-Asiatic.

To return to our subject—i. e., of naval warfare—the limitations of which allow us to give only a passing attention to general codifications of international law which would contain within their boundaries, of course, the laws of naval warfare. The more prominent of these are the codes of Bluntschli, in 1868, David Dudley Field, in 1872, Prof. Fiore, in 1890 (with a fourth edition in 1911), and the

elaborate work of Jerome Internoscia in 1911. There are in the purely military code of the laws of warfare on land, a number of matters that apply alike to land and sea warfare, on such matters as prisoners, spies, cartels, the requirements of humanity, etc., etc. Such common material is found in Dr. Francis Lieber's laws of war, in the code of the Institute of International Law for the laws of land warfare in 1873 and 1880, in the Declaration of Brussels of 1874, and in the Convention with respect to the Laws and Customs of War on Land of the First and Second Hague Conferences in 1899 and 1907.

Oppenheim, in the second edition of his work on *International Law*, says:

> Shortly after the Hague Peace Conference of 1899 the United States of America took a step with regard to sea warfare similar to that taken by her in 1863 with regard to land warfare. She published on June 27, 1900, a body of rules for the use of her navy under the title "The Laws and Usages of War at Sea," the so-called U. S. Naval War Code.
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> Although on February 4, 1904, this code was by authority of the President of the United States withdrawn, it provided the starting point of a movement for codification of maritime international law. No complete naval war code agreed upon by the Powers has as yet made its appearance, but the Second Hague Peace Conference of 1907 and the Naval Conference of London of 1908-1909 have produced a number of law-making treaties which represent codifications of several parts of maritime international law.

I might add to this quotation from Oppenheim that so late as the Naval Conference of London the United States Department of State in its instructions to its delegates embodied the Naval War Code referred to, as the principal matter of the instructions.

Of the various topics coming under the head of naval warfare, those contained in the following declarations and conventions have been treated with sufficient agreement to form component parts for a naval code to be more or less modified in a final formation:

1. The Declaration of Paris.
2. The convention respecting the laws and customs of war upon land. (First and Second Hague Conferences.)
3. The convention for the adaptation to maritime war of the principles of the Geneva Convention. (Second Hague Conference.)
4. The convention relative to the opening of hostilities. (Second Hague Conference.)

5. The convention relative to the status of enemy merchant ships at the outbreak of hostilities. (Second Hague Conference.)

6. The convention relative to the conversion of merchant ships into war ships. (Second Hague Conference.) Not accepted by United States.

7. The convention relative to the laying of automatic submarine contact mines. (Second Hague Conference.)

8. The convention respecting the bombardment by naval forces in time of war. (Second Hague Conference.)

9. The convention relative to certain restrictions with regard to the existence of the right of capture in naval war. (Second Hague Conference.)

10. The convention relative to the creation of an International Prize Court. (Second Hague Conference.)

11. The convention concerning the rights and duties of neutral Powers in naval war. (Second Hague Conference.)

12. The declaration prohibiting the discharge of projectiles and explosives from balloons. (Second Hague Conference.)

13. The Declaration of London.

This leaves the following questions unsettled concerning which agreements should be attempted in order to complete a naval code of sea warfare.

1. The subject of the conversion of merchantmen at sea or in neutral ports into men-of-war. A reconversion to merchantmen from the status of war vessels.

2. The status of aliens engaged in sea trade in the enemy's country.

3. The status of neutral vessels engaged in war time in a trade forbidden them in time of peace. This includes cabotage and petit cabotage. (Rule of war of 1756.)

4. The use of false colors in war time by belligerent vessels of war.

5. The use and treatment of telegraphic cables in war time.

6. The immunity from capture of private property at sea.

7. The formation of a volunteer navy. Privateering.

8. The extension of immunities from search and detention of neutral mail steamers in war time.

9. The extension of the width of the marginal sea belt or the marine league.

10. The recognition and status of insurgent vessels of war at sea.

11. The rules of the visits of belligerent vessels of war in neutral ports. Their internment, their coaling and the extent of their periods of return.

12. The definite period allowed to an enemy ship in port at outbreak of war or declaration of blockade—days of grace.

13. The status of pacific blockade in regard to merchant vessels of Powers not immediately concerned.

(1) In regard to the conversion of merchantmen anywhere upon the high seas, there is very considerable difference of opinion existing between the various great sea Powers according to their assumed interests in the matter. In a general way the subject is of more importance to countries having a large merchant marine and but few ports. Such a conversion can be made to be very irritating when a belligerent vessel uses neutral ports as a merchantman until she arrives near a point or time where it is desired to strike at the trade of its opponent. Then leaving its neutral port as a merchantman it is converted into a man-of-war without any knowledge or warning to the outside world and hunts its prey. The conversion of the *Alabama* into a Confederate man-of-war after leaving Liverpool is a case in point, which served to create and keep alive a feeling of injury sustained for many years until settled by the Geneva Conference and the Alabama Award. Possibly some middle ground can be found by an announcement of intention of conversion upon leaving a home port, but so far no agreement has been reached either at the Second Hague Conference or during the Naval Conference at London. Even the compromise offered by the Italian delegation at the Second Hague Conference allowing the conversion upon the high seas to merchantmen who leave their territorial waters before the outbreak of war found a divided body: Great Britain, the United States, Belgium, Brazil, Italy, Japan, Norway, Holland and Sweden for, and France, Germany, Austria, Argentine, Chile, Russia and Servia against such restriction. There seems little justification to be offered in regard to a conversion in a neutral port as it is an operation evidently not in accord with neutrality.

(2) The question of the status of aliens engaged in sea trade in a belligerent country is not an important one except that it should be decided one way or the other. The United States holds that the character of such a trader is determined by his domicile, while Ger-

many maintains the position that it is determined by his national character.

(3) The third point brings in the force of the rule of the war of 1756 as applied to coastwise or insular trade. The coastwise trade is divided by the French classification into *cabotage* and *petit cabotage*. By *cabotage* is designated the trade between the home country and other over-sea ports like between Havre and Marseilles, while *petit cabotage* is the sea trade between ports on the same stretch of coast. The expression coasting or coastwise trade has however been given another extension or interpretation by the United States. Russia and Great Britain have confined their definition of coasting or coastwise trade to extend to various seas, provided the ports are in the country which is a political and geographical unit, and as there is only one stretch of territory between St. Petersburg on the Baltic and Vladivostock on the Pacific, that trade came within the definition of coasting trade or cabotage as the French would call it.

The United States, however, not only calls the trade between New York and San Francisco by the way of Cape Horn as coasting trade, but also by the way of Panama by rail before the completion of the Panama Canal and in the face of a land transit and re-shipment of the cargo. At a later date, in 1898 and 1899, the United States of America further declared sea trade between any of her home ports and those of Porto Rico, the Philippines and the Hawaiian Islands to be coasting trade and hence reserved by law to American vessels exclusively. This practically makes coasting trade and colonial trade conform to the trade affected by the rule of the war of 1756, which asserts that in time of war neutral vessels engaging in this trade, denied to them in time of peace, are subject to capture for unneutral service. This rule we have not accepted and do not accept, but Great Britain revived it at the London Naval Conference as in force. Several delegations, the United States of course among them, rejected the proposal and the second paragraph of Article 57 of the Declaration of London treats of the subject as follows:

The case where a neutral vessel is engaged in a trade which is closed in time of peace remains outside the scope of, and is in no wise affected by this rule.

Thos. J. Lawrence of this says:

Great Britain, backed by several important maritime Powers, still holds that if a belligerent throws open in time of war, to neutrals, a coasting or colonial trade which is confined to its own subjects in time of peace, its foe may treat all neutral merchantmen who take advantage of the permission as enemy vessels. Another group of Powers, headed by the United States, holds strongly to the contrary opinion, and unless a settlement is soon reached the question may become acute and dangerous in a great maritime war.

(4) The use of false colors is forbidden in time of war in land warfare and should not be permitted in sea warfare. The ethics in this case differs from the sea usage and conforms to land warfare.

(5) The use and treatment of submarine cables in war time can, I think, be readily agreed upon at an international conference.

(6) Following the Naval War Code of the United States as to an agreement as to an immunity from capture of private property at sea I am not so confident. It is hardly worth while to discuss the matter here and now even if time permitted. The division as to national opinions is practically equal.

(7) The formation of a volunteer navy in time of war is treated with the question of privateering and that of conversion of merchantmen into men-of-war and would be facilitated by an adoption of the Declaration of Paris formally on our part.

(8) The interference with neutral mail steamers in time of war is becoming more and more vexatious to those concerned as time goes on. It is quite probable that an immunity from seizure and taking into port will become generally acceptable except in grave cases or extensive carriage of contraband or of course an attempted evasion of blockade.

(9) The extension of the width of marginal sea belts is a matter to be considered favorably with the increasing range of guns and with regard to cases of smuggling followed by hot pursuit by revenue vessels.

(10) The status of insurgency is becoming more and more tangible and should be followed by the recognition of insurgent vessels afloat as having belligerent rights and not as pirates.

(11) There should be more uniformity in the rules governing the visits and the duration of the stay of belligerent vessels of war in neutral ports, also as to the rules for the use of such ports and the

length of periods between coalings. The variance between the English and French practice was very great during the Russo-Japanese war, and became a matter of moment to the Russians.

(12) The days of grace allowed to merchantmen of an enemy at the outbreak of war should be more uniform.

(13) The status of the pacific blockade with respect to quasi-neutral vessels is one that should be determined and the differentiation of pacific and warlike blockades well established. The position of the United States is well known in this matter. It considers a pacific blockade as effective alone against the nation upon whose ports it is brought to bear, and that the so-termed neutral shipping is not susceptible to the restrictions placed upon a vessel of the blockading or offending Power. For this reason the Venezuelan blockade was forced by our well-known views from a peaceable status to that of a warlike one.

From what I have stated in this paper I think that it is not unreasonable to hope and expect that at the next Hague Conference the beginning of a codification of the rules of naval warfare may be begun. It is to be presumed that there will be periodical meetings of the Hague Conferences, or, better still, of naval conferences of the great sea Powers, so that revision of this sea code will follow in the successive meetings after a trial which is not unlikely to be had in the occasional, or, may we hope for the future, in the *rare* occurrence of maritime war.

As to the enforcement of the proposed code after the decision is made by the International Prize Court there have been various methods proposed.

Article 66 of the Declaration of London provides that

> The signatory Powers undertake to insure in any war in which all the belligerents are parties to the present Declaration the mutual observance of the rules contained herein. They will therefore issue the necessary instructions to their authorities and to their armed forces, and will take such measures as may be required in order to insure that it will be applied by their courts, and more particularly by their prize courts.

Internoscia in his code provides for its enforcement by the formation of an international police force composed of quotas contributed by various nations—of troops, ships and railway trains. Perhaps these two propositions represent the extreme views upon the subject.

A word of perhaps not untimely digression in closing. In my opinion there should be established in addition to an international naval code of laws, an international maritime code for the government of vessels engaged in sea trade, especially those engaged in the trade of carrying passengers.

The carriage of passengers has grown to such a degree by the facilities of sea communication as to almost rival land carriage of passengers over distances.

It is true that the vessels engaged in such trade represent territory of the flag they carry, but these vessels ply between ports of different nations and carry passengers representing almost every civilized and semi-civilized country in the world. While under the municipal law of their own country, in ownership, in cargo, and in their passengers, the interests connected with them may be and very often are absolutely international or at least of a closer nature to other nations than that of their own origin and flag. Especially is this the case with the trans-Atlantic vessels coming to our own ports. Our citizens, either actual or prospective, outnumber all others carried, and reasons of humanity, as well as the self-interest of all concerned, should give the matter an international status and the laws governing their safety should be based upon international treaty and action.

Such sea traffic should be regulated so that vessels should not run into known danger at a high rate of speed, that sufficient number of boats be carried to carry all souls on board, that a long period of time should not be taken to lower boats in favorable or unfavorable circumstances, and that such boats should not be undermanned as to seamen, and be without proper principal and petty officers to take charge. Seconding Mr. Wheeler's suggestions of last evening, it is proposed that action should be taken by this Society, as it properly can be, asking our national legislature and general government to call for such purposes an international conference for the formation of an international code to protect the many who entrust their lives upon the great deep.

The CHAIRMAN. The paper is now open for discussion. If there is none, we will proceed to the paper of General George B. Davis, on "The Effects of War upon International Conventions and upon Private Contracts," which will be read for him in his absence.